128.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48671-2018
Date of decision:01.11.2018.

HEMANT GOYAL ... Petitioner

versus

STATE OF HARYANA .... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Karanvir Singh Khehar, Advocate, for the petitioner.

HARI PAL VERMA, J._(Oral)_

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing the order dated 08.10.2018 (Annexure P-8) whereby the application filed by the petitioner seeking permission to go abroad i.e. Dubai (UAE) to attend the business meetings, was dismissed.

Notice of motion.

At the asking of the Court, Mr. Manish Bansal, DAG, Haryana, accepts notice on behalf of the respondent-State.

Let a copy of paper book be given to learned State counsel during the course of the day.

An FIR No.1578 dated 24.11.2015 under Sections 420/467/ 468/471/120-B of IPC was registered at Police Station City Panipat, District Panipat against the petitioner along with other co-accused at the behest of Ramesh Chander (complainant).

Learned counsel for the petitioner states that despite the FIR having been registered on 24.11.2015, the investigation in the case has not yet been completed. The petitioner is basically a businessman and merely there is an FIR against him, should not be a ground to restrict his movements including his visits abroad for his business activities. He has received an invitation from Ramada Overseas Trading Co. LLC dated 06.09.2018 inviting him for a business tour to UAE from 20.09.2018 to 31.12.2018, which contains the details of his passport as well. He states that the petitioner is ready to furnish an undertaking to the effect that he would return back to India on or before 31.12.2018 and is ready to comply any of the conditions so imposed by this Court, so as to facilitate his visit to Dubai (UAE). He has argued that the petitioner had moved an application dated 03.10.2018 before the Illaqa Magistrate, but the same was dismissed without appreciating the need of the petitioner to go abroad and on frivolous grounds. Though initially the petitioner was ready to go abroad for about 3 months, but now that period has been reduced upto 31.12.2018.

Learned State counsel has argued that there is no illegality in the order passed by the learned Magistrate. The application was not filed with complete details as the petitioner had not submitted his air tickets to substantiate the fact that he has to go abroad and will return to India within the stipulated period.

I have heard learned counsel for the parties.

A similar plea to go abroad during the pendency of proceedings before the trial Court has been considered by this Court in ***Ms. Urvi Agarwal Versus State of Haryana*** in ***CRM-M No.17854 of 2015 dated 29.05.2015*** which was again based on the judgment passed by the Hon'ble Apex Court in ***Srichand P. Hinduja Versus State through CBI, New Delhi-2002(3) RCR (Criminal) 186*** wherein the Hon'ble Supreme Court had permitted the appellant-therein, as an interim measure, to go abroad by laying down certain conditions including execution of a bond with a bank guarantee and it was ordered that the appellant-therein shall remain present before the Special Judge as and when their presence is needed. A rider was also imposed that in case there is any violation of the conditions, it would be open to the Court to pass an appropriate order for cancellation of bail of the appellant and this interim measure was specified upto a particular date.

Similarly, in ***Arun Kapoor Versus State of Haryana-2004(4) RCR (Criminal) 594,*** this Court has considered the prayer for release of passport, as the petitioner-therein had to go abroad in connection with the business of the company. An application was moved before the trial Court for release of passport, but the same was declined. Even the criminal revision petition filed against the order passed by the Magistrate was also dismissed. However, this Court, on a petition filed under Section 482 Cr.P.C., while relying upon the case of ***Srichand P. Hinduja's case*** ***(supra)*** has observed as under:-

> "10. It is not in dispute that the petitioners are having business commitments to fulfill and they have to go abroad for business dealings. It is also not in dispute that the petitioners do go abroad for business dealings. It is also not in dispute that contracts have to be procured from abroad to carry out the work here. Besides, the petitioners had earlier also gone abroad in terms of the permission granted by this Court on 1.8.2003 and they have returned and re-deposited their passports.
>
> 11. The Hon'ble Supreme Court in **Srichand P. Hinduja v. State through C.B.I., New Delhi, 2002(3) RCR (Crl.) 186 (SC): AIR 2002 Supreme Court 410** granted permission to go abroad to the accused in the said case. The case related to offences punishable under Sections

120-B and 420 Indian Penal Code as also under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. In the said case also, a plea was raised that if the appellants therein were permitted to go abroad, it would affect the smooth progress of the trial and there are reasonable grounds to believe that they would not return back to India to face the trial. It was noticed, that the appellants therein were Indian Nationals at the time of registration of the FIR and thereafter they had acquired British and Swiss Nationalities. The Hon'ble Supreme Court, after considering the facts and circumstances of the case as an interim measure allowed the accused therein to go abroad subject to their furnishing adequate sureties.

12. This Court in **Brij Bhushan Singal v. Central Bureau of Investigation, 1994(3) RCR (Crl.) 498 (P&H)** which is a case where the Special Judge granted bail to accused therein but impounded his passport to prevent him from going abroad, held that it was competent to review the order under Section 482 Criminal Procedure Code and order released of the passport. Accordingly, the accused therein was permitted to go abroad and then return within four months subject to his furnishing security in the sum of Rs.25 lacs."

Merely because there is an FIR registered, should not generally be a good ground to deny permission to a person to go abroad, more particularly when the person is a businessman and investigation in the case remained incomplete for the last about 3 years.

In the case in hand, no such material had been brought on record before the trial Court which may give a reasonable apprehension that the petitioner has an oblique motive to go abroad and is not intending to come back. The observations made by the trial Court that the petitioner has not produced the air tickets cannot be accepted as the air tickets are planned only when there is no obstacle in the way i.e. FIR or any criminal proceedings pending. In the case in hand, unless the petitioner got clearance from the Court, it is but presumed that no person will book the air tickets or lock them in advance.

In view of above, this Court finds that the present petition deserves to be accepted and the impugned order is liable to be set aside.

Accordingly, the petitioner is permitted to go abroad, but in any case, he will return back to India on or before 31.12.2018. Even otherwise, this Court finds that the FIR was registered on 24.11.2015 and investigation in the case is pending for about 3 years. Thus, under the garb of pendency of FIR, the movements of the petitioner who is a businessman, should not be curtailed/restricted when investigation is pending since long. Accordingly, the petitioner is permitted to go abroad, subject to his furnishing a bank guarantee of an amount of Rs.15 lakhs. He shall submit an undertaking before the Illaqa Magistrate that he will report back before the learned Magistrate on 07.01.2019. The learned Magistrate may put any other reasonable condition which he may deem fit in the peculiar facts and circumstances of the case.

With the above observations, the present petition is allowed and the impugned order dated 08.10.2018 is set aside.

(HARI PAL VERMA)
JUDGE

01.11.2018
sanjeev

Whether speaking/reasoned Yes/No.
Whether Reportable: Yes/No.